

## **EXHIBIT E**



**optionsXpress<sup>®</sup>**  
Online Options & Stock Brokers

## User/Customer Agreement – Terms & Conditions

The following terms apply to users and accounts at optionsXpress:

- General Conditions of Use - User Agreement
- Account Terms & Conditions
- Appendix A - Margin Account Terms
- Appendix B - Options Account Terms

### General Conditions of Use - optionsXpress User Agreement

The investment choices and services on publicly available portions of the optionsXpress, Inc. ("optionsXpress") site are provided as general information only and are not intended to provide investment recommendations, tax, or legal advice. Under no circumstance is the information contained herein to be used or considered as an offer to sell or a solicitation of an offer to buy any particular investment.

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### Systems Are Subject to Occasional Congestion, Technological Problems or Outage

System response and access times may vary due to market conditions, system performance, and other factors. High volumes of trading and volatility may result in executions at prices significantly away from the price quoted or displayed at the time of order entry.

optionsXpress maintains sophisticated systems and employs experienced personnel to receive and process your transactions over the Internet. Information processing and communications systems, both our own and those of third parties on whom we depend, are subject to occasional congestion, technological problems, or in extreme cases, outage.

Beyond our proprietary systems, third party providers include, but are not limited to market centers that execute orders and quote vendors. Failure of a critical system for a significant period of time could limit our ability to rapidly and accurately process transactions.

Links to other web sites or references to other products, services or publications do not imply the endorsement or approval of such web sites, products, services or publications by optionsXpress, its agents or its affiliates.

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transmission or other copying or modification ("Unauthorized Use") of Intellectual Property may be a violation of the law and could subject those engaging in Unauthorized Use to legal action

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**optionsXpress Account Terms and Conditions**

*In consideration of our accepting and maintaining an Account for you, you hereby agree that you have read, understand and agree to the following Terms and Conditions. You further understand that your use of the site, your placing of any order to effect transaction(s), your placement of assets in an optionsXpress account, and/or your use of optionsXpress public or private services, constitutes assent to the Terms and Conditions then posted and in effect on the optionsXpress site.*

**1. Parties**

This document ("Agreement") contains important information regarding the terms and conditions which apply to you and your Account (referred to as "you" "your" and/or "Account"). All rights conveyed under the terms and provisions of this Agreement apply to optionsXpress, Inc., its agents and assigns (referred to as "optionsXpress," "we", "us", "our", or "ours").

**2. The Terms "Securities" and "Property"**

For the purposes of this Agreement, the terms "securities" and "property" shall include, but are not limited to, currencies, securities, options contracts, financial instruments, commodities of every kind and nature, and all contracts and options relating thereto, whether for present or future delivery.

**3. Applicable Rules and Regulations**

All transactions shall be subject to all then applicable United States federal and state laws rules and regulations promulgated thereunder; the constitution, rules, customs and usages of the applicable exchange, association, market or clearing house, and the customs and usages of those transacting business on such exchange, market or clearing house where transactions, custody or business of the Accounts are done.

**4. Headings are Descriptive**

The heading of each provision hereof is for descriptive purposes only and shall not be deemed to modify or qualify any of the rights or obligations set forth in each such provision.

**5. Amendments**

We may at any time amend this Agreement, by modifying or rescinding any of our existing provisions or conditions or by adding any new provision or condition, by conspicuously posting notice of such amendment on our web site or by providing written notice to you, and by our updating and maintaining such agreements in a publicly-accessible place on our website. Continued use of optionsXpress's sites or services after such notice and posting will constitute acknowledgment and acceptance of such amendment.

**6. Entire Agreement**

This Agreement represents the entire agreement between you and us concerning the subject matter herein. Certain supplements, policies and/or procedures ("Postings") may be further outlined on the optionsXpress web site and by your use of our web site and services, you agree to be bound by any and all Postings. You may not assign any right or obligations hereunder without first obtaining the prior written consent of an authorized officer of optionsXpress.

**7. Other Agreements Apply**

You agree and understand that other specific disclosures, terms and conditions apply to your use of the site and your account. It is your continuing obligation to understand such terms, and you agree to be bound by such terms as are in effect at the time of your use or maintenance of your account as they apply. Such agreements include, but are not limited to agreements relating to:

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- a. Margin Accounts
- b. Options Accounts
  - Short Option Trading
- d. Electronic Delivery of Documents and Services
- e. Exchange Data Use
- f. Terms and Risks relating to Stop Orders, Spreads, NBBO, and Expiration / Daily Assignments
- g. Privacy Statement

**8. Clearing Status**

optionsXpress acts as clearing agent for your account and transactions and may be referred to herein as "agent" or as "Clearing Agent." These services include but are not limited to the preparation of customer trade confirmations and customer statements, the settlement of securities transactions, the performance of designated cashing functions, and the preparation of certain books and records related to reported securities transactions.

You understand and agree that any rights that optionsXpress has under this Agreement may be exercised by optionsXpress or may be assigned to other agents, including, but not limited to, the right to collect any debit balance or other obligations owing in your Account, and that optionsXpress or its agents may collect from you or enforce any other rights under this Agreement independently or jointly.

**9. Current Information**

You agree to always provide optionsXpress with accurate information which you update when your circumstances change. You represent and warrant that the information you supply in your new Account documentation, your account profile, and all other information requested by us and provided by you is accurate and truthful. You further understand that you have a duty to immediately update such information if your information or financial circumstances change.

**10. Security Interest and Lien**

All securities and other property now or hereafter held, carried or maintained by us in our possession or control, for any purpose, in or for the benefit of any of your Accounts, now or hereafter opened, including any Account in which you may have an interest, shall be subject to a continuing first lien and first priority perfected security interest in favor of us for the discharge of all indebtedness and your other obligations to us, and are to be held by us as security for the payment of any liability or indebtedness of yours to us in any of your Accounts.

You authorize us the right to transfer securities and other property so held by us from or to any other of your Accounts held by us, whenever, in our judgment, we consider such transfer necessary for our protection. In enforcing our lien and security interest, we shall have the right and discretion to determine which securities and properties are to be sold and which contracts or positions are to be closed.

**11. Account Restriction or Breach**

You understand that we may at any time, at our sole discretion and without prior notice to you; prohibit or restrict your access to the use of the web site or related services and your ability to trade, we may refuse to accept any of your transactions, we may refuse to execute any of your transactions, and/or we may terminate your Account. The closing of an Account will not affect the rights and/or obligations of either party incurred prior to the date the Account is closed.

**Payment of Indebtedness Upon Demand.** You shall at all times be liable for the payment, upon our demand, of any debit balance or other obligations owing in Accounts of yours with us, and you shall be liable to us for any deficiency remaining in any such Accounts in the event of the liquidation thereof, in whole or in part, by us or by you; and, you shall make payment for such obligations and indebtedness upon demand by us.

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In the event of a breach or default by you under this Agreement, we shall have all rights and remedies available to a secured creditor under all applicable laws and in addition to the rights and remedies provided herein.

#### 12. Check Deposits

You understand and agree that we may hold funds deposited by you for any length of time until payment is made and the deposit has cleared. Alternatively, we may offer the privilege of trading against check deposits before collection of the proceeds, and in any case, if a deposited check is dishonored by the bank on which drawn or the privilege is otherwise abused, we may, at any time in its sole discretion without notice, revoke this privilege and/or liquidate all securities positions in your Account that were purchased/sold short using the uncollected funds without incurring any liability on our part, any trading gains resulting from trading against uncollected funds represented by a deposited check or other financial instruments are our property unless and until the funds represented by that instrument (not a substitute or supplemental instrument) are collected by us, and you remain responsible to us for any losses resulting from such trading, in addition to your responsibility to make good any dishonored check.

In addition, you acknowledge and give approval that we may, at our discretion and without further prior notice, utilize an electronic check process or Automated Clearing House (ACH) facility to draft funds in the amount of any of your checks payable to optionsXpress, its agents or assigns.

#### 13. Joint / Multi-party Accounts

If you maintain a joint or multiparty Account, unless you notify us otherwise and provide such documentation as we require, your Account shall be held in joint tenancy with rights of survivorship. Each joint tenant irrevocably appoints the other as attorney-in-fact to take all action on his or her behalf and to represent him or her in all matters with respect to this agreement. You agree to indemnify us and we shall be fully protected in acting upon the instructions of either of you. This includes the sending of confirmations, statements, notices or other communications to either of you, or in making delivery to any of the joint owners of any and all securities and other property in the Account, or making payments to any of the joint owners of any or all monies in the Account as any of the joint owners may order and direct, or specifically fulfilling obligations pertaining to and/or as a result of any check writing privileges of either joint tenant. We shall be under no obligation to inquire as to the purpose of any such demand for deliveries and payments. However, you understand that we may request at our sole discretion that each party or person authorize a specific transaction, including deposits or withdrawals, although we may not be required to do so. Each of you shall be jointly and severally liable for any amounts due to us pursuant to this Agreement, whether incurred individually or by both of you.

In the event of the death of any of the joint owners, the surviving joint owner(s) shall immediately give optionsXpress prompt written notice thereof, and we may, before or after receiving such notice, take such actions, require such documents, and restrict transactions in the Account as we deem advisable, in our sole discretion. The estate of any deceased joint owner shall be liable and each survivor will be liable, jointly and severally, to us for any debt or loss in the Account resulting from the completion of transactions initiated prior to our receipt of a written notice of death, or for debt or loss incurred in the liquidation of the Account or the adjustment of the interests of the joint owners.

Any taxes or other expense becoming a lien against or being payable out of the Account subsequent to the death of any of the joint owners shall be chargeable against the interest of the surviving joint owner(s) as well as against the interest of the deceased joint owner's estate.

Custodial accounts are created for the benefit of a minor, with an adult that manages the account. Assets that are held in a custodian account are considered to be an irrevocable gift and become property of the minor. Depending on state residency, minors may be governed by the Uniform Transfer to Minors Act ("UTMA") or by the Uniform Gifts to Minor Act ("UGMA"). The age of custodianship termination varies by state, although many states set the maximum age for termination at 21. If you do not indicate governing state law of the minor, the account will be set up using the Custodian's state of residence and that state's



default age of custodianship termination (either 18 or 21). Because important tax and legal issues may be involved, we suggest consulting a tax or legal adviser before opening this type of account to determine what would be best for your individual situation.

#### 14. No Advice Online

You understand that we, through our web site, provide no tax, legal or investment advice of any kind, nor do we give advice or offer any opinion with respect to the nature, potential value or suitability of any particular securities transaction or investment strategy. You further understand that while you may be able to access investment research reports through the Internet from our web site, including computerized online services, the availability of such information does not constitute a recommendation to buy or sell any of the securities discussed therein or to engage in any of the investment or trading strategies presented therein. Any investment decisions you make will be based solely on your own evaluation of your financial circumstances and investment objectives and the suitability for you of any security or any investment or trading strategy.

#### 15. Third Party Access

Your use or your grant of access to your account to any third party to access information or place transactions in your account is at your sole risk. If you authorize or allow third parties to gain access to our services, including your Accounts, you will cooperate in defending and indemnifying us against any liability, costs or damages arising out of claims or suits by such third parties based upon or relating to such access and use. optionsXpress does not warrant against loss of use or any direct, indirect or consequential damages or losses to you caused by your assent, expressed or implied, to a third party access to your account or information, including access provided through software communication "API" users, aggregators or any other third party systems or sites. Any requests or orders entered using your access shall be deemed a request or order by you or your duly authorized designee's.

#### 16. Order Entry

You understand that all orders submitted or entered by you, either electronically or otherwise, are based upon your investment decisions, are unsolicited and are your sole responsibility, and you will not hold, nor seek to hold, optionsXpress or any of our officers, directors, employees, agents, subsidiaries or affiliates, liable for any trading losses or other losses incurred by you. You understand that entering an order with us, including market orders, either electronically or otherwise, does not guarantee execution of the order, and you agree that optionsXpress shall not be responsible for any order that is not executed. You understand that optionsXpress or any regulatory body, exchange or clearing agent, has the right to cancel or break any executed transaction on the grounds that it was, in our or their opinion, "clearly erroneous". We shall not be deemed to have received any order electronically transmitted by you until we have actual knowledge of such order. You understand that all electronic orders are only acceptable through order entry screens provided by us. All orders marked Good-until-Cancelled, or "GTC" are submitted to the marketplace as Day Orders, cancelled after the close, held on our systems overnight and resubmitted each new market day until filled or cancelled. In the event that you wish to place an order "GTC" with the marketplace directly you must contact us to place that order through a representative.

#### 17. Cancellation Requests

When you place a request to cancel an order, the cancellation of that order is not guaranteed. Your order will only be canceled if your request is received in the marketplace and matched up with your order before your order is executed. During market hours, it is rarely possible to cancel your market order as market orders are subject to immediate execution. Do not assume that any order has been executed or cancelled until you have received a transaction confirmation from us via e-mail or the optionsXpress web site.

#### 18. Late and Corrected Reports

From time to time we receive late reports from exchanges and market makers reporting the status of transactions. Accordingly, you may be subject to late reports related to orders that were previously unreported to you or reported to you as being expired, cancelled or executed. In addition, any reporting or posting errors, including errors in execution prices, will be corrected to reflect what actually occurred in the

marketplace or exchange.

### 19. Transactions and Settlements

orders for the purchase and sale of securities and other property will be authorized by you and executed with the understanding that an actual purchase or sale is intended and that it is your intention and obligation, in every case, to deliver certificates to cover any and all sales or to pay for transactions upon our demand. If we make a sale of any securities and/or other property at your direction, and if you fail to deliver to us any securities and/or other property that we have sold at your direction, we are authorized to borrow or otherwise obtain the securities and other property necessary to enable us to make delivery, and you agree to be responsible for any cost or loss we may incur, including the cost of borrowing and obtaining the securities and other property. You agree that optionsXpress acts as your agent to complete all such transactions and is authorized to make advances and expend monies as required.

### 20. Execution of Orders

Though orders are usually routed to the marketplace or exchange within seconds, certain orders, at our sole discretion, may be subject to manual review and entry, which may cause delays in the processing of your orders. You also understand that with respect to any order, you will receive the price at which your order was actually executed in the marketplace or exchange, which may be different from the price at which the security or option is trading when your order is entered into our system. Consistent with the overriding principle of best execution and subject to applicable regulatory requirements, you agree that we may use our discretion in selecting the market or exchange in which to enter your orders.

### 21. Purchases of Securities

Cash transactions must be paid for in full, and any securities sold must be available for delivery by settlement date or we may, as required by law or in our discretion, delay settlement or cancel or otherwise liquidate transactions without prior notice. Day Trading, as defined by regulation, is not permitted in "cash accounts" unless the aggregate cash required to pay for all purchases is available, not including the sales proceeds from the day-traded shares.

### 22. Excess Purchases

To process orders to purchase securities we generally require that your Account contain buying power equal to or greater than the purchase price of the securities prior to trade date. However, you may not rely on our software controls and you have an obligation to refrain from, cancel and immediately report any transaction that provides evidence of an over-purchase or excess equity requirement. Any order accepted and executed without sufficient funds in the Account will be subject to cancellation or liquidation at our discretion. You are responsible for review of your orders, including any orders which exceed available funds in your Account. If full funds are not available in the Account and an order is processed, you must contact us and arrange to provide prompt payment via wire or personal check, cashier's check or money order. If payment is not received by settlement date, or as market conditions warrant, positions may be liquidated according to procedures contained elsewhere herein, and you will remain liable for any resulting losses and all associated costs incurred by us.

### 23. Sales of Securities - Long and Short Sales

We require that securities be deposited into an Account and in good deliverable form prior to the acceptance of a long sale order. Any sell order will be deemed a long sale unless, at the time the order was entered, you expressly request and receive permission from optionsXpress to place the order as a short sale. In order to complete a short sale, we must be able to borrow the security you sold and did not own. In the event that we are unable to borrow the security you have sold short, you will be subject to a buy-in of the security for your Account without prior notice and at your expense. You understand that although you may receive confirmation of a "locate" in order to sell short, you remain subject to buy-in at any time in the event that the shares become no longer available for borrowing or loan.

### 24. Confirmations, Statements, Notices and Other Communications

You acknowledge that optionsXpress delivers both binding and non-binding Communications to you

regarding your account. optionsXpress uses its best efforts to identify each Communication as either binding (also described as official notices) or non-binding (often "real-time" or online account information). Despite the nature or method of conveying this information, you are responsible for promptly reporting any discrepancies. You understand that optionsXpress delivers real-time information about the status of your orders by email along with providing online ledgers and order status information which are non-binding upon optionsXpress, its agents and assigns; and that such information may be changed based on market corrections and resolution of discrepancies among other factors.

## 25. Information Review

You understand that it is your responsibility to review, upon first receipt, whether delivered to you by U.S. postal mail, orally, by email, or electronically, all confirmations, statements, notices and other binding and non-binding communications, including but not limited to, margin and maintenance calls, and prospectuses ("Communications"). You agree that Communications sent to you by mail or electronically or left for you on your voicemail, or otherwise, shall be deemed to have been delivered to you when sent, whether actually received by you or not. All information contained therein shall be binding upon you, if you do not object, either in writing or via electronic mail, within forty-eight (48) hours after any Communication has been delivered to you. In all cases, we reserve the right to determine the validity of your objection to the transaction.

## 26. Payment for Order Flow

The Securities and Exchange Commission (the "SEC") and the National Association of Securities Dealers, Inc. ("NASD") require that all broker/dealers inform their customers, when a new Account is opened, on an annual basis thereafter, and on confirmations of transactions, of payment for order flow practices (compensation received for placing orders through certain "market makers" and specialists on registered U.S. exchanges). Consistent with the requirement to seek best execution, orders placed through us will be routed to primary exchanges and other market centers, including regional securities exchanges, dealers at make markets over-the-counter ("OTC"), Alternative Trading Systems and Electronic Communication networks ("ECNs"). In an effort to obtain best execution, we may consider several factors, including price improvement opportunities (executions at prices superior to the then prevailing inside market on OTC or national best bid or offer for listed securities), whether we will receive cash or non-cash payments for routing order flow and reciprocal business arrangements. Further information about the source and nature of the compensation for a particular transaction will be provided upon written request.

## 27. Customer's Responsibility Regarding Certain Securities

Certain securities may grant the holder thereof valuable rights that may expire unless the holder takes action. These securities include, but are not limited to, options, warrants, stock purchase rights, convertible securities, bonds and securities subject to a tender or exchange offer. You are responsible for knowing the rights and terms of all securities in your Account. We are not obligated to notify you of any upcoming expiration or redemption dates, or to take any other action on your behalf, without specific instructions from you, except as required by law and applicable rules of regulatory authorities. However, if any such security is about to expire worthless or be redeemed for significantly less than its fair market value, and we have not received instructions from you, we may, at our discretion, sell (or transact in) the security and credit your Account with the proceeds.

Similarly, you are responsible for knowing about reorganizations related to securities which you hold, including, but not limited to, stock splits and reverse stock splits. We are not obligated to notify you of any such reorganization. If, due to a reorganization or bookkeeping or data entry error, you sell more shares of a security than you own, or if you become uncovered on an options position, or if you become otherwise exposed to risk requiring us to take market action in your Account, we will not be responsible for any losses you may incur. Overselling is an "unauthorized" and "prohibited" short sale and may result in your Account being restricted.

## 28. "Control" or "Restricted" Securities

Prior to depositing or placing an order in connection with the sale or transfer of any securities subject to



Rules 144 or 145 under the Securities Act of 1933, as amended, you must advise optionsXpress of the status of the securities, receive our express permission for such transaction, and you must furnish us with the necessary documents including applicable opinions of legal counsel to clear legal transfer. Even if the necessary documents are furnished in a timely manner, there may be delays with the processing of such securities. We, at our sole discretion, may require that such securities not be sold or transferred until they clear legal transfer. You are responsible for all costs associated with compliance or failure to comply with all the requirements of Rules 144 and 145 including any fees associated with the administration, processing or negotiation of such securities by us or any agent. You acknowledge unless you disclose the status of securities as control or restricted, you are representing and warranting that the securities are negotiable.

### 29. Lost Securities

If your periodic statement indicates that securities were forwarded to you and you have not received them, you should notify us immediately.

### 30. Fees and Charges

You understand that we may charge commissions and other fees for execution or any other transaction or service furnished to you, and you agree to promptly pay such commissions and fees at our then prevailing price or rates. You acknowledge and agree that such commission rates and fees are determined and set solely by us and are subject to change at any time by posting such notice on our web site, and you agree to be bound thereby. You also agree to pay any applicable exchange and ECN fees. You further agree to pay all applicable federal, state and local fees and taxes.

### 31. Margin Requirements and Margin Interest Charges

You agree that you will maintain such securities and other property in your Account as collateral as required by all applicable statutes, rules, regulations and procedures or as we in our sole discretion deem necessary or advisable. You agree to promptly satisfy all margin and maintenance calls upon demand. You understand that the interest charge made to your Account at the close of a charge period will, unless paid, be added to the opening balance for the next charge period and that interest will be charged upon such opening balance, including all interest so added. You understand that the rate of interest charged to your Account is based on the Broker Call Money Rate plus a percentage. You are always welcome to check the interest rate with customer service. We reserve the right to negotiate the interest rate for credit extended. Interest charges are calculated on the daily net debit balance in your Account based upon a sliding scale of percentage above and below the Broker Call Money Rate. Interest will be posted monthly to your Account and is calculated on a 360-day year. Interest charged can be verified by using the following formula as noted below:

$$\frac{[\text{Average debit balance}] \times [\text{interest rate}] \times [\text{number of days Account was in a debit for the interest period}]}{\text{divided by } [360 \text{ days}]}$$

### 32. Consent to Loan or Pledge of Securities in Margin Accounts

Within the limits of applicable law and regulations, you hereby authorize optionsXpress to lend, either to us or to others, any securities held by optionsXpress for your Account, together with all rights of ownership, and to use all such property as collateral for our general loans. Any such property, together with all attendant rights of ownership, may be pledged, repledged, hypothecated or rehypothecated either separately or in common with other such property for any amounts due to us thereon or for greater sum, and we shall have no obligation to retain a like amount of similar property in our possession and control. In connection with such securities loans, we may receive and retain certain benefits to which you will not be entitled. You understand that, in certain circumstances, such loans could limit your ability to exercise voting rights, in whole or part, with respect to the securities lent.

### 33. Calls for Additional Collateral and Liquidation

If we, at our sole discretion, consider it necessary for our own protection, we may require you to

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○ immediately deposit cash or collateral into your Account. If you do not provide the additional collateral, you understand and acknowledge that we have the right to sell any or all securities and other property in your Account; buy any or all securities and other property which may be short in your Account; cancel any or all open orders; and/or close any or all outstanding contracts.

**34. Liquidation without Prior Notice**

In addition, you understand and agree that we may exercise any or all of the above rights without demand for additional collateral, or notice of sale or purchase, or other prior notice or advertisement. Any such sales or purchases may be made at any time at our discretion on any exchange or other market where such business is usually transacted, or at public auction or private sale, or we may be the purchaser/seller for our own Account. It is understood that our giving of any prior demand or call or prior notice of the time and place of such sale or purchase shall not be considered as a waiver of our legal right to sell or buy without any such demand, call or notice, nor are we bound by such prior demand or notice to forestall action to buy or sell.

**35. Free Credit Balances**

You hereby direct optionsXpress and/or our agents to use any free credit balance awaiting investment or reinvestment in your Account in accordance with all applicable rules and regulations and to pay interest thereon at such rate or rates and under such conditions as are established by us from time to time.

**36. Market Data**

○ You understand that each participating national securities exchange or association asserts a proprietary interest in all of the market data it furnishes to parties that disseminate said data. You understand that neither optionsXpress nor any participating national securities exchange or association nor any supplier of market data guarantees the timeliness, sequence, accuracy, completeness, reliability or content of market information, or messages disseminated to or by any party. You understand that neither optionsXpress nor any participating national securities exchange or association nor any supplier of market data warrants that the service will be uninterrupted or error-free. You agree that your use of our web site or any optionsXpress service is at your sole risk. **The optionsXpress service is provided on an "as is", "as available" basis without warranties of any kind, either express or implied, including, without limitation, those of merchantability and fitness for a particular purpose, other than those warranties which are implied by and incapable of exclusion, restriction or modification under the laws applicable to this agreement.**

**37. Exchange Provided Terms (OPRA)**

You acknowledge and agree that neither the OPRA Participants ("Participants" and/or "Exchanges") nor the processor under the OPRA Plan (the "Disseminating Parties" and/or "optionsXpress") guarantee the timeliness, sequence, accuracy or completeness of Market Data or of other market information or messages disseminated by any Disseminating Party.

**A. Waiver of Liability**

You understand and acknowledge that each national securities exchange that is a participant in the OPRA Plan ("OPRA Participant") has a proprietary interest in the Market Data that originates on or derives from it or its markets. For the purposes of this Section only, "Market Data" means (a) options last sale reports, (b) options quotation information, (c) such index and other market information as the OPRA participants may from time to time make available, and (d) all information that derives from any such information. Neither you nor any other person shall hold any Disseminating Party liable in any way for (a) any inaccuracy, error or delay in, or omission from, (i) any such data, information or message or (ii) the transmission or delivery of any such data, information or message, or (b) any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance or (iii) interruption in any such data, information or message, whether due to any negligent act or omission by any Disseminating Party, or to any "force majeure" (e.g., flood, extraordinary weather conditions, earthquake or other act of God, fire, war, insurrection, riot, labor dispute, accident, action of

government, communications or power failure, equipment or software malfunction) or other cause beyond the reasonable control of any Disseminating Party.

#### **B. No Right to Re-disseminate**

You shall use real-time quotes only for your individual use and shall not furnish such data to any other person or entity. You understand and agree that you shall use Market Data only for your own personal or business use, and shall not furnish Market Data to any other person. You further understand and agree that, at any time, the OPRA Participants may discontinue disseminating any category of Market Data, may change or eliminate any transmission method and may change transmission speeds or other signal characteristics. You shall not hold the OPRA Participants liable for any resulting liability, loss or damage that may consequently arise. You understand and acknowledge that this Section confers third-party beneficiary status on optionsXpress. In authorizing us to take any action, or to receive any communication, this Section authorizes us to act on our own behalf and on behalf of the OPRA Participants.

#### **C. Enforceability of OPRA Rights**

You understand that the terms of this Agreement may be enforced directly against you by the national securities exchanges, associations and others providing market data. Any OPRA Participant may enforce this Section as to Market Data that originates on or derives from its markets, by legal proceeding or otherwise, against you and may likewise proceed against any person that obtains such Market Data other than as this Section contemplates. No act or omission on our part and no other defense that might defeat our recovery against you shall affect the rights of the Disseminating Parties as third-party beneficiaries under this Section. You shall pay reasonable attorneys' fees that any Disseminating Party incurs in enforcing this Section against you.

#### **D. Perpetuity to this Clause**

This specific Section shall remain in effect for so long as you have the ability to receive Market Data as contemplated by this Agreement and all terms relating to limitation of liability shall survive the termination of this Agreement.

#### **E. Limitation of Liability, Force Majeure**

Neither we nor any disseminating party shall be liable, and you agree to indemnify and hold harmless optionsXpress and such disseminating party, for any inaccuracy, error or delay in, or omission of, (1) any such data, information or message, or (2) the transmission or delivery of any such data, information or message; or any loss or damage arising from or occasioned by (i) any such inaccuracy, error, delay or omission, (ii) non-performance, or (iii) interruption in any such data, information or message, due either to any act or omission by optionsXpress or any Disseminating Party or to any "force majeure" (as defined above) or any other cause beyond the reasonable control of optionsXpress or any Disseminating Party.

#### **38. Disclosure of Affiliated Persons**

You represent that, except for your notification of such status in writing, neither you nor any member of your immediate family are an employee of any exchange, any corporation of which any exchange owns a majority of the capital stock, a member of any exchange or self regulatory agency, a member of any firm or member corporation registered on any exchange, a bank, trust company, insurance company or any corporation, firm or individual engaged in the business of dealing either as broker or as principal in securities, bills of exchange, acceptances or other forms of commercial paper. You understand and agree that you will promptly notify us in writing if you or a member of your immediate family become so employed or become registered or employed in any of the above capacities.

#### **39. Disclosure by Professionals and Insiders**

You agree to promptly notify us in writing if you are now or if you become: (a) registered or qualified with the NASD or the SEC, the Commodities Futures Trading Commission, any state securities agency, any

securities exchange or association, or any commodities or futures contract market or association; (b) an "investment advisor" as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act); or (c) employed by a bank or other organization exempt from registration under federal and state securities laws to perform functions that would require you to be so registered or qualified if you were to perform such functions for an organization not so exempt; (d) an officer, director or 10% stockholder of any publicly traded company.

#### 40. Disclosures to Issuers

Under Rule 14b-1(c) promulgated under the Securities Exchange Act of 1934, as amended, optionsXpress is required to disclose to an issuer the name, address, and position of its customers who are beneficial owners of that issuer's securities unless you object. If you do not notify us of such objection in writing, we will make such disclosures to issuers.

#### 41. Impartial Lottery Allocation System

You agree that in the event we hold securities on your behalf which are callable, either in whole or in part, you will participate in the impartial lottery allocation system of the called securities in accordance with the provisions of the rules of the CBOE, NASD or any other appropriate self-regulatory body. You understand that when any such call is favorable, no allocation will be made to any Account in which optionsXpress has actual knowledge that our affiliates, directors, officers or employees have a financial interest until all other customers are satisfied on an impartial lottery basis.

#### 42. Limitation of Access

You acknowledge, represent and warrant that you have received a password which provides access to your Account and that you are the sole and exclusive owner and are the only authorized user of such password and accept sole responsibility for use, confidentiality and protection of the password as well as for all orders, requests and information changes (i.e., change of address) entered into your Account using such password.

You accept full responsibility for the monitoring and safeguarding of your Accounts and access to your accounts. You will immediately notify us in writing, delivered via e-mail and certified/return receipt requested U.S. Mail, if you become aware of: (i) any loss, theft or unauthorized use of your password, Account number, or access; (ii) any failure by you to receive a message from us indicating that an order was received and executed; (iii) any failure by you to receive an accurate written confirmation of an execution; (iv) any receipt by you of confirmation of an order and/or execution which you did not place; or (v) any inaccurate information in or relating to your Account balances, deposits, withdrawals, securities positions, or transaction history.

If you fail to notify us immediately upon your knowledge, actual or constructive, when any of the above conditions or other disclosure of access details occurs, neither we nor any of its officers, directors, employees, agents, affiliates or subsidiaries can or will have any responsibility or liability to you or to any other person whose claim may arise through you for any claims with respect to the handling, mishandling or loss of any order, including by way of example, but not limitation, orders to execute, transfer or withdrawal. Under no circumstances, including negligence, shall we or anyone involved in creating, producing, delivering or managing our services be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the service, or out of any breach of any warranty. This exclusion or limitation of liability will not apply to the extent that any applicable statute prohibits such exclusion or limitation of liability. To the extent that any applicable statute applies which modifies the above, our liability shall not include any hypothetical gains or losses, and it is agreed that the trier of fact shall only consider the actual acts, or lack thereof, of the parties to this agreement.

The use and storage of any information including, without limitation, the password, portfolio information, transaction activity, Account balances and any other information or orders available on your personal computer is at your own risk and is your sole responsibility. You are responsible for providing and maintaining the communications equipment (including personal computers, firewalls, anti-virus software



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and other software, and modems) and telephone or alternative services required for accessing and using the web site or related services, and for all communications service fees and charges incurred by you in accessing our web site or related services.

#### **43. Limitations, Restrictions and Termination of Services**

You are authorized to use materials which are made available by optionsXpress for your own needs only, and you are not authorized to resell access to any such materials or to make copies of any such materials for sale or use to and by others without the written permission of a duly authorized officer of optionsXpress. You will not delete copyright or other intellectual property rights notices from printouts of electronically accessed materials.

#### **44. Liability for Costs of Collection and Arbitration**

You agree to pay and shall be liable for the costs and expenses of collection of a debit balance or any unpaid deficiency in your Account with us, including, but not limited to, attorney's fees, court costs and any other costs incurred or paid by us. This liability shall include fees and expenses, including attorney's fees, for any arbitration brought or other proceeding against you by us or brought against us by you where such arbitration results in a finding in our favor. You agree that we may, in our sole discretion, use and share any information about you, whether provided by you to us or otherwise acquired by us in the course of business, in furtherance of collection of losses or debts owed to us or in prevention of future losses.

#### **45. Investor Education and Protection**

Under the Public Disclosure Program, the NASD provides certain information regarding the disciplinary history of NASD members and their associated persons in response to written inquiries, electronic inquiries or telephone inquiries via NASD Regulation's toll-free telephone number, 1-800-289-9999. Additional information may be obtained from the NASD Regulation web site at <http://www.nasdr.com/>. An investor brochure describing the Public Disclosure Program is available from optionsXpress.

#### **46. Arbitration Provisions**

You understand and agree to the following:

- Arbitration is final and binding on the parties.
- The parties are waiving their right to seek remedies in court, including the right to a jury trial.
- Pre-arbitration discovery is generally more limited than and different from court proceedings.
- The arbitrators' award is not required to include factual findings or legal reasoning and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited.
- The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

#### **Agreement to Arbitrate Controversies:**

You agree that any and all controversies which may arise between you and optionsXpress or any of our officers, directors, employees, agents, subsidiaries or affiliates including but not limited to those involving transactions of any kind made on your behalf by, through or with optionsXpress, our officers, directors, employees, agents, subsidiaries or affiliates and the construction, performance or breach of this or any other agreement between you and us shall be determined by arbitration conducted before the NASD in accordance with its arbitration rules then in force. You specifically agree, however, as permitted by statute and/or regulation, to arbitrate all such controversies before the NASD in Chicago, Illinois.

You consent to jurisdiction by the NASD where any claim is initiated by us and against you. Judgment upon any award of the arbitrators may be entered in any court, state or federal, having jurisdiction thereof. No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class



certification is denied; (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein.

if you are a foreign national, non-resident alien, or if you do not reside in the United States, you affirmatively agree to waive your right to file an action against us in any foreign venue other than with the NASD as set forth above. The laws of the State of Illinois will govern the interpretation and enforcement of the terms of this Agreement, and you further consent to the jurisdiction of the State of Illinois over you individually and your successors (whether by merger, consolidation or otherwise), heirs, executors, administrators, and assigns.

#### 47. Account Protection

Securities are held by the Clearing Agent who is a member of the Securities Investor Protection Corporation (SIPC). Cash and securities held in your Account are protected by SIPC up to \$500,000 per customer, of which, a maximum of \$100,000 can be un-invested cash. Assets held by other custodial institutions or you are not covered. The Clearing Agent maintains an additional protection in excess of the SIPC insurance coverage through a private insurer. Assets held by other custodial institutions or by you are not covered.

SIPC coverage and the additional coverage are provided to afford certain protections against loss to customers resulting from broker-dealer failure. The Account protection applies when SIPC member firms fail financially and are unable to meet obligations to securities customers. It neither protects against losses from the rise and fall in the market value of investment(s) nor is it a guarantee against the bankruptcy or default of the issuer of an investment security purchased by a customer.

#### 48. Monitoring and Recording Telephone Conversations and E-mail, Credit Investigation

For our mutual protection and as a tool to correct misunderstandings, you understand, agree and authorize us, at our discretion, and without further prior notice to you, to monitor and record any or all telephone conversations between you and us and between you and any of our employees or agents and to monitor electronic communications conducted by you or your Account with us. You authorize us, at our discretion, to make and obtain reports concerning your identity, credit standing, legal and/or business conduct.

#### 49. Representation as to Capacity and Access

You represent that you are of required legal age and capacity to enter into this Agreement and that you have the legal standing and are empowered to enter into contracts and agreements for the transactions requested and performed in this account. You understand that you have an obligation to notify us in the event that you lack capacity. You further represent that you are willing, able and agree to access and use current technology, including the internet, firewalls and any anti-virus or other software to access your account online, receive information, receive and send email, and place any necessary transactions in your account; and that you possess a computer and/or otherwise have access to the internet on a regular basis.

#### 50. Legally Binding

You hereby agree that this agreement and all the terms herein shall be binding upon you and your estate, heirs, executors, administrators, personal representatives, successors and assigns. You agree that all purchases and sales shall be for your Account in accordance with your oral or written instructions. This Agreement shall inure to the benefit of us and our successors, assigns and agents. We may assign our rights and duties under this Agreement to any of our subsidiaries or affiliates without giving you notice, or to any other entity upon prior written notice to you. You hereby waive any and all defenses that any such instruction or agreement was not in writing as may be required by the Statute of Frauds or any other similar law, rule or regulation.

#### 51. Extraordinary Events/Technical Difficulties

You specifically agree to hold us harmless from any and all claims, and agree that we shall not be liable for any loss, actual or perceived, caused directly or indirectly by any force majeure, exchange or market regulation, suspension of trading, equipment failure, communication line failure, system failure, security failure on the Internet, unauthorized access, theft, or any problem, technological or otherwise, that might prevent you from entering or optionsXpress from executing an order, including by way of example, but not limitation, order to execute, transfer or withdrawal, or other conditions beyond our reasonable control.

You further agree and understand that you will not be compensated by us for "lost opportunity," e.g., you were unable to enter an order due to technical difficulties and the security you wished to purchase increased in value. Furthermore, in a technical environment, should an error occur with respect to the tracking of any Account holding or order entry, the true, actual and correct transaction or position may be restored. It is your responsibility to ensure Account correctness and accuracy and to contact optionsXpress immediately with any discrepancies.

High volumes of trading and volatility may result in executions at prices significantly away from the price quoted or displayed at the time of order entry. Information processing and communications systems, both our own and those of third parties on whom we depend are subject to occasional congestion, technological problems, or in extreme cases, outage. Beyond our proprietary systems, third party providers include market centers that execute orders and quote vendors. Failure of a critical system for any period of time could limit our ability to rapidly and accurately process transactions.

## **52. Breach, Bankruptcy or Default**

Any breach of this Agreement, or the filing of a petition or other proceeding in bankruptcy, insolvency, or for the appointment of a receiver by or against you, the levy of an attachment against your Account(s) with us, or your death, mental incompetence or dissolution, or any other grounds for insecurity, as determined by us in our sole discretion, shall constitute, a default by you under all agreements we may then have with you, whether heretofore or hereafter entered into.

In the event of default, you authorize us and we reserve the right to sell, without prior notice to you, any and all property in which you have an interest, held by or through us or any of our affiliates, to buy in any or all property which may have been sold short, to cancel any or all outstanding transactions and to purchase or sell any other securities or property to offset market risk, and to offset any indebtedness you may have (either individually or jointly with others), after which you shall be liable to us for any remaining deficiency, loss, costs or expenses sustained by us in connection therewith. Such purchases and sales may be effected publicly or privately without notice or advertisement in such manner as we may in our sole discretion determine. At any such sale or purchase, we may purchase or sell the property free of any right of redemption. In addition, we shall have the right to set off and apply any amount owing from us or any of our affiliates to you against any indebtedness in your Accounts, whether matured or not matured.

## **53. Waiver/Assignment**

Except as specifically permitted in this Agreement, no provision or condition of this Agreement can be, nor should be deemed to be, waived, altered, modified or amended unless agreed to in writing by an authorized officer of optionsXpress. Neither our failure to insist at any time upon strict compliance with this Agreement or with any of the terms herein, nor any continued course of such conduct on our part shall constitute or be considered a waiver by us of any of our rights or privileges herein.

## **54. Severability**

If any provision or condition of this Agreement shall be held to be invalid or unenforceable by reason of any law, rule, administrative order or judicial decision by any court, or regulatory or self-regulatory agency or body, such invalidity or unenforceability shall attach only to such provision or condition. The validity of the remaining provisions and conditions shall not be affected thereby and this Agreement shall be carried out as if any such invalid or unenforceable provision or condition were not contained herein.

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#### Appendix A - Margin Account Terms

*In consideration of your opening one or more Margin Accounts with optionsXpress you understand and agree to the following additional terms and conditions:*

##### 1. Liquidation of Collateral

We may sell any or all property held in any of your accounts and cancel any open orders for the purchase or sale of any property without notice whenever, in our discretion, we consider it necessary for our protection. In such event we may also borrow or buy in all property required to make delivery against any sale, including a short sale. Such sale or purchase may be made in such manner as we in our discretion determine. No demands, calls, tenders or notices which we may make or give in any of one or more instances shall invalidate the foregoing waiver on our part. At any such sale we may purchase the property free of any right of redemption and you shall be liable for any deficiencies in your account.

##### 2. Disclosures Regarding Liquidations and Covering Positions

You clearly understand that, notwithstanding a general policy of giving customers notice of a margin deficiency, we are not obligated to request additional margin from you in the event your account falls below minimum maintenance requirements. More importantly, there may or will be circumstances where we will liquidate securities and/or other property in the account without notice to you to ensure that minimum maintenance requirements are satisfied.

##### 3. Liquidations and Covering Positions

We shall have the right, in accordance with our general policies regarding margin maintenance requirements, to require additional collateral or the liquidation of any securities and other property whenever in our discretion we consider it necessary for our protection, including in the event of, but not limited to: the failure of yours to promptly meet any call for additional collateral; the filing of a petition in bankruptcy by or against you; the appointment of a receiver is filed for or against you; an attachment is levied against any account of yours or in which you have an interest in such account(s); or your death. In such event we are authorized to sell any and all securities and other property in any account of yours whether carried individually or jointly with others, to buy all securities or other property which may be short in such account(s), to cancel any open orders and to close any or all outstanding contracts, all without demand for margin or additional margin, other notice of sale or purchase, or other notice or advertisement each of which is expressly waived by you. Any such sales or purchases may be made at our discretion on any exchange or other market where such business is usually transacted or at public auction or private sale and we may be the purchaser for our own account. It is understood a prior demand, or call, or prior notice of the time and place of such sale or purchase shall not be considered a waiver of our right to sell or buy without demand or notice as herein provided.

##### 4. Loans

We may, at our discretion, make loans to you for any purpose, including the purchasing, carrying or trading in securities. The minimum and maximum amount of any particular loan may be established by us regardless of the amount of collateral delivered to us and we may change such minimum and maximum amounts from time to time.

You agree to maintain in all accounts with us such positions and margins as required by all applicable statutes, rules, regulations, procedures and customs, or as we deem necessary or advisable. You agree to promptly satisfy all margin and maintenance calls.

##### 5. Payment of Loans on Demand

You agree to pay on demand any balance owing with respect to any of your accounts, including interest, commissions and any costs of collection (including attorney's fees). You understand we may demand full

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payment of any balance due in your accounts plus any interest charges accrued thereon, at our sole option, at any time without cause or whether or not such demand is made for our protection. You agree that we may, at our sole option, apply payments of interest, dividends, premium and principal received on / of the collateral, whether pursuant to the terms of such collateral or on the sale of the collateral, to the payment of any balance due in your accounts or pay such amounts to you.

**6. Maintenance of Collateral**

The properties in your account may be carried in our general loans and may be pledged or hypothecated by us separately or in common with other properties. The pledge or hypothecation by us may secure our indebtedness equal to or greater than the amount owed to us by you. You agree to deposit additional collateral, as we may in our discretion require from time to time in the form of cash or securities. In the event you no longer retain a debit balance or an indebtedness to us it is understood that we will fully segregate all securities in my accounts in our safekeeping or control (directly or through a clearing house) and/or deliver them to you upon your request.

**7. Security Interest**

As security for the payment of all loans and liabilities made under this or any other agreement between us, you grant us a secured interest in any and all property belonging to you or in which I have an interest, held by us or created in any of your accounts (individual or multiple owner). All properties shall be subject to such security interest as collateral for the discharge of your obligations to us, wherever or however arising and without regard to whether or not you have made loans with respect to such property. In enforcing such security interest we shall have discretion to determine which property is to be sold, the order in which it is to be sold, and shall have all the rights and remedies available to a secured party under the Illinois Uniform Commercial Code.

**8. Interest Charges and Payments**

You agree to pay interest upon all amounts advanced and other balances due in your accounts in accordance with our usual custom, which may include the compounding of interest. Our customs, which may change from time to time, will be set forth in the disclosure of credit terms, which is incorporated herein. By entering into any transactions with you after we receive the disclosure of credit terms, you acknowledge you have read and agreed to the disclosure of credit terms for all past and future transactions in your account. We may, in our discretion, not deem any check, or other remittance, to constitute payment until it has been paid by the drawee and the funds representing such payments have become available to us.

**9. Disclosure of Credit Terms in Margin Transactions**

The basic facts governing a margin account cleared by optionsXpress are as follows:

**A. Your account will be charged interest for any credit extended to you for the purpose of purchasing, carrying, or trading in any security.**

**B. Annual rate of interest which your account will be charged:**

You will be charged interest on the daily amount of credit extended to you (your margin balance). Your interest rate at all times, regardless of the amount of your margin balance, will be a percentage above the current Base Rate. The Base Rate is an internally calculated rate set with reference to commercially recognized interest rates, industry conditions related to the extension of credit and general credit market conditions. Your rate of interest will change automatically and without prior notice with changes in the Base Rate. The interest charge will appear on your account statement. You may contact us, or your Registered Representative if applicable, to check the current Base Rate. We reserve the right negotiate the interest rate for credit extended to any customer and/or charge different categories of customers different rates. We will provide you at least 30 days' prior written notice of changes in the interest rate, other than the Base Rate.



**C. Calculation of interest**

Interest is accrued on the amount of credit extended to you on a daily basis. If you maintain a cash account with a free credit balance and a margin account balance, the free credit balance in your cash account will be used to reduce the amount of credit extended you in your margin account for the purpose of calculating interest. The effect will be an interest charge on the net amount of your indebtedness.

**D. Liens and additional collateral**

Any securities in any of your accounts held individually, jointly or with others, are collateral for any credit extended to you. A lien is created by the extension of credit to secure the amount of money owed to us. This means that in accordance with the terms of the Customer's Agreement, securities in your account can be sold to reduce or to eliminate any extension of credit in your account.

If there is a decline in the market value of your securities which are the collateral for the credit extended to you, it may be necessary for us to request additional margin. Ordinarily, a request for additional margin will be made when the equity in the account falls below 30 percent of the market value of all securities in the account. (The equity is the excess market value of the securities in the account over the amount of credit extended). However, we retain the right in our sole discretion, to require additional margin. These margin calls can be met by delivery of either additional securities or cash.

**E. Interest on short sales**

Any and all short positions in your account will be kept "marked-to-the-market". This term simply means that on a daily basis the value of securities you sold short will be adjusted to reflect their current market value. These adjustments will increase or decrease the balance used in determining your interest charge. For example, if you sold short 100 XYZ for \$5,000 (credit) and its current market value is \$4,000, the balance used to determine your interest charge would be reduced by \$1,000 thus decreasing the amount of interest you will be charged. If on the other hand, the current market value of XYZ is \$6,000, the balance used to determine your interest charge would be increased by \$1,000 thus increasing the amount of interest you will be charged.

**F. Nature of special charges**

There are no special charges imposed on a margin account.

**10. Margin Account Additional Notices (NASD Disclosure)**

optionsXpress is providing these basic facts about purchasing securities on margin, and to alert you to the serious risks involved with trading securities in a margin account. Before trading stocks in a margin account, you should carefully review the margin agreement provided by optionsXpress.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from optionsXpress. If you choose to borrow funds from optionsXpress, you will open a margin account. The securities purchased are the firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan, and, as a result, optionsXpress can take action, such as issue a margin call and/or sell securities in your account, in order to maintain the required equity in the account.

It is important that you fully understand the risks involved in trading securities on margin. These risks include the following:

**A. You can lose more funds than you deposit in the margin account.**

A decline in the value of securities that are purchased on margin may require you to provide additional funds to optionsXpress (who has made the loan) to avoid the forced sale of those



securities or other securities in your account.

**B. optionsXpress can force the sale of securities in your account.**

If the equity in your account falls below the maintenance margin requirements under the law, or the firm's higher "house" requirements, optionsXpress can sell the securities in your account to cover the margin deficiency. You also will be responsible for any shortfall in the account after such a sale.

**C. optionsXpress can sell your securities without contacting you.**

Some investors mistakenly believe that a firm must contact them for a margin call to be valid, and that the firm cannot liquidate securities in their accounts to meet the call unless the firm has contacted them first. This is not the case. Most firms will attempt to notify their customers of margin calls, but they are not required to do so. However, even if the firm has contacted a customer and provided a specific date by which the customer can meet a margin call, the firm can still take necessary steps to protect its financial interests, including immediately selling the securities without notice to the customer.

**D. You are not entitled to choose which security in your margin account is liquidated or sold to meet a margin call.**

Because the securities are collateral for the margin loan, optionsXpress has the right to decide which security to sell in order to protect its interests.

**E. optionsXpress can increase its "house" maintenance margin requirements at any time and is not required to provide you with advance written notice.**

These firms' changes in policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may cause the member to liquidate or sell securities in your account.

**F. You are not entitled to an extension of time on a margin call.**

While an extension of time to meet margin requirements may be available to customers under certain conditions, a customer does not have a right to the extension.

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### Appendix B - Options Account Terms

You hereby agree to the following terms and conditions which govern equity and index option trading:

**1. You understand that options contain a high degree of risk and are often speculative in nature.** You acknowledge that, based on your investing experience and financial situation, you fully understand and are fully prepared financially to undertake such risks and withstand any losses incurred. You certify that we may rely on the information you furnished to us relative to your investing experience and financial condition. And further, you agree to promptly advise us, in writing, of any change in your financial condition or investment objectives that may affect, in any way, the suitability of your trading options.

**2. You have received, read and understand "Characteristics and Risks of Standardized Options" delivered by optionsXpress as issued by the Options Clearing Corporation ("OCC").** You agree to that each option transaction is subject to the rules and regulation of the OCC, the exchange or market where such transaction is executed, the NASD and various other state and federal regulatory entities. You understand that you must comply with all applicable duties and responsibilities.

**3. You understand that due to the short-term nature of options it is likely that you will be trading options more frequently than stocks or bonds.**

You understand and agree that you will be charged a commission each time you trade. You also understand that although a spread order may be entered on our order screen as one net debit/credit, you will be charged a commission on each leg of the order.

**4. You understand that you bear full responsibility for taking action to exercise a valuable option.** You understand that the OCC, national securities and associations and/or marketplaces have established exercise cutoff times and your options will become worthless in the event you do not deliver instructions in a timely manner. You understand we will use our best efforts to exercise valuable options on your behalf provided that you have enough buying power to support the resulting position. In all instances, you agree to assume full and complete financial responsibility and liability for all exercise and/or assignments. You are responsible for understanding the consequence of expiration style and risks related to expiration. The writer of an American-style option is subject to being assigned an exercise at any time after he has written the option until the option expires. By contrast, the writer of a European-style option is subject to exercise assignment only during the exercise period.

**5. You understand that optionsXpress uses a random method for the assignment of "OCC" exercise and assignment notices.**

All short options positions, including a leg of a spread, are liable for assignment. The method for random assignment is available upon request by contacting optionsXpress.

**6. You hereby agree to observe all Exchange established position limits and will not purposely on your own or in concert with others violate such limits.**

You expressly authorize us to liquidate or close-out any of your options positions, without notice to you and without your consent, in our sole and absolute discretion, if and when your open positions exceed applicable position limits so as to reduce such open positions to a level that is in compliance with such limits. You will bear and be solely responsible for any losses associated with such a reduction or liquidation. You also acknowledge and agree that under applicable rules and regulations we may be required to provide options exchanges, markets or clearing organizations with information concerning your options positions and related data.

**7. Special notice to owners of "long" fully paid-for options.**

You MUST have the necessary assets to meet Regulation T for the exercise of fully paid-for in the money options in order to exercise the position, or we, at our discretion, may close out your position prior to the close of business on the last day before exercise. Regulation T requires a margin Account to be open with at least 50% of the new purchase or exercise in cash or good marginable assets.

You understand that it is your responsibility to manage your positions. The above provision is a right of optionsXpress to protect itself from undue risk and NOT a benefit you may rely on to excuse your obligation to manage your Account prudently. Over-leveraged Accounts are subject to this provision, and may be liquidated in order to protect optionsXpress. Over-leveraged is defined as any Account below 40% equity.

**8. Special Statement For Uncovered Options Writers.**

There are special risks associated with uncovered option writing, which expose the investor to potentially significant loss. Therefore, this type of strategy may not be suitable for all customers approved for options transactions.

The potential loss of uncovered call writing is unlimited. The writer of an uncovered call is in an extremely risky position, and may incur large losses if the value of the underlying instrument increases above the exercise price.

As with writing uncovered calls, the risk of writing uncovered put options bears a risk of loss if the value of the underlying instrument declines below the exercise price. Such loss could be substantial if there is a significant decline in the value of the underlying instrument.

Leverage minimums on uncovered options may be exceeded by volatile market movements, creating risk in excess of available collateral. This may create a loss of assets beyond account value

covered options writing is suitable only for a knowledgeable investor who understands the risks, and has the financial capacity and willingness to incur potentially substantial losses, and has sufficient liquid assets to meet applicable margin requirements. If the value of the underlying instrument moves against an uncovered writer's option position, we may request significant additional margin payments. If an investor fails to make such margin payments, optionsXpress may liquidate stock or options in the investor's Account, with little or no prior notice in accordance with the investor's margin agreement.

For combination writing, where the investor writes both puts and calls on the same underlying instrument, the potential risk is unlimited.

It is expected that you have read and understood "Characteristics and Risks of Standardized Options" and your attention is directed to the chapter entitled Risk of Buying and Writing Options. This statement is not intended to enumerate all of the risks entailed in writing uncovered options.

#### **9. Special Statement for Combination and Spread Traders.**

Options spread traders must understand the additional risks associated with this type of trading and before using optionsXpress' spread and combination orders and systems.

While it is generally accepted that spread trading may reduce the risk of loss of the trading of the outright purchase of a standardized option contract, an investor/trader **MUST** understand that the risk reduction can lead to other risks.

#### **Early Exercise And Assignment Can Create Risk And Loss.**

Spreads are subject to early exercise or assignment that can remove the very protection that the investor/trader sought. This can lead to margin calls and greater losses than anticipated when the trade was entered.

#### **Execution Of Spread Orders Is Often "Not Held" and at the Discretion of Marketplace.**

Spreads are not standardized contracts as are exchanged traded put and calls. Spreads are the combination of standardized put and call contracts. There is NO spread market in securities that are subject to such benchmarks such as "time and sales" or "NBBO" (National Best Bid/Offer) and therefore the "market" cannot be "held" to a price.

#### **Spreads Are Executed Differently Than "Legged" Orders.**

Spreads are used by strategists as examples of risk protection, profit enhancement and as a basis for results and return on investments. However, these strategies assume that the trade can actually be executed as a spread when market forces may and can make the actual execution impossible. Spreads entered through optionsXpress screens are submitted as spreads and as such are subject to the market risk and may be affected by conditions related to human execution of dual or combination orders.

#### **Spreads are bona-fide trades and not "legged" or "paired" of individual separate trades.**

For example: options prices on crossed-markets are misleading for the spread trader. An option may be offered on one exchange and bided on another exchange that can lead the trader to believe that their spread trade should be filled, when, in fact, the bids and offers must be on the SAME exchange. As all bona-fide spreads are routed and executed on "one" exchange.

#### **Spreads Are Generally Entered On A Single Exchange And Are Acted Upon By A Market Maker or Floor Broker.**

Spreads are executed at the discretion of a market maker or floor broker and when cancelled

or filled require that the market maker take manual action and require manual reporting at times. Delays for reporting of fills and cancels may create additional risks, especially in fast or changing markets.

**Closing Transactions May Not Be Possible.**

If a secondary market in options were to become unavailable, investors could not engage in closing transactions, and an option writer would remain obligated until expiration or assignment.

**Style of Expiration Poses Unique Risks.**

American Style options may be exercised against the writer at any time, which may create unexpected risks and requirements. If a short option is assigned against your account, action may be required to avoid losses and for other reasons. By contrast, European style options may create risks at expiration when exercised.

**10. Option Purchases in an IRA, Qualified or Cash Account**

While it is permissible to transact options in an IRA Account you must be aware of the unique qualities of an IRA Account. Regulations prohibit margin lending transactions in an IRA Account. Therefore, holders of long options in an IRA (or Cash) Account MUST have a cash balance equal to or greater than the requirement to exercise the options in the Account on the last day prior to expiration or we will close out the position in the open market on a "best" efforts basis prior to the market close.

In the event that you maintain a Cash or IRA account with us and you request and receive the ability to trade American-style spreads, you acknowledge that we may carry such positions in a margin location (or margin account) which may subject your account to additional requirements.

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